



EUROPEAN COMMISSION
DIRECTORATE-GENERAL ENERGY AND TRANSPORT

Brussels, July 2009

INVITATION TO TENDER No. TREN/G3/316-1/3-2008

(Open procedure)

Dear Sir/Madam,

1. The European Commission invites tenders for a service Contract regarding the following project:
GALIFREGS (Galileo Frequency Regulatory Support) Contract
 - the Contract notice in OJEU **2009/S 136-198082**
2. If you are interested in this Contract, you must submit a tender in **triplicate**, in one of the official languages of the European Union. In addition, you are requested to equally insert in the tender package an electronic version of the full tender.

Tenders must be:

(a) either sent by registered mail or by private courier

The tender must be sent by registered mail or by private courier, dispatched not later than 21/09/2009 (the postmark or the receipt issued by the courier service serving as proof of the dispatch) to the following address:

By registered mail

European Commission
Directorate-General Energy and Transport
DM 28 - 0/110 - Archives
B-1140 Brussels
Belgium

By private courier

European Commission
Directorate-General Energy and Transport - DM 28 - 0/110
Avenue du Bourget, 1
B-1140 Brussels (Evere)
Belgium

(b) or delivered by hand

Tenders must be delivered by hand at the **Central Mail of the European Commission** by 21/09/2009 not **later than 4 p.m.** (Brussels time), at the following address:

European Commission
Directorate-General Energy and Transport – DM 28 0/110
Avenue du Bourget, 1
B-1140 Brussels (Evere)
Belgium

In this case, a receipt must be obtained as proof of submission, signed and dated by the official in the Commission's central mail department who took delivery. The department is open from 08.00 to 17.00 Monday to Thursday, and from 8.00 to 16.00 on Fridays. It is closed on Saturdays, Sundays and Commission holidays.

3. Tenders must be placed inside two sealed envelopes, one inside the other. **The inner envelope should be marked:**

<p>Call for tenders No. TREN/G3/316-1/3-2008 <u>not to be opened by the internal mail department</u> DM 28 0/110 – Archives</p>
--

If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.

The non-compliance with these formal conditions will entail the rejection of the bids at the opening session.

4. Tenders will be opened at 3 p.m. on 28/09/2009, at 28 Rue De Mot (Directorate-General Energy and Transport, mail department, ground floor, office 110 1040-Brussels).
This opening session will be public. Each tenderer may be represented by not more than one person. At the end of the opening session, the Chairman of the opening committee will indicate the name of the tenderers and the decision concerning the admissibility of each offer received. The prices mentioned in the bids will not be communicated.
5. The specification, listing all the documents that must be produced in order to tender, including supporting evidence of economic, financial, technical and professional capacity and the draft Contract are attached.
6. Tenders must be signed by the tenderer or his duly authorised representative and perfectly legible so that there can be no doubt as to words and figures.
7. Validity period of the tender: six months as from the final date for submission of tenders mentioned under point 2 above.
8. Submission of a tender implies acceptance of all the terms and conditions set out in this invitation to tender, in the specification, in the draft Contract and, where applicable, waiver of the tenderer's own general or specific terms and conditions. The terms and conditions are

binding on the tenderer to whom the Contract is awarded during the performance of the Contract.

9. Contacts between the awarding authority and tenderers are prohibited throughout the procedure except in exceptional circumstances and under the following conditions only:

Before the closing date for submission of tenders

- At the request of the tenderer, the awarding authority may provide additional information solely for the purpose of clarifying the nature of the Contract.

Requests for additional information must be sent in writing not later than six calendar days before the closing date for submission of tenders to the following address:

Mr Dominic Hayes
European Commission
DM28 04/004
B-1049 Brussels
Belgium

Fax (+ 32 2) 299 83 32

E-mail: TREN-G5-CALL-FOR-TENDERS@ec.europa.eu

- The Commission may, on its own initiative, inform interested parties of any error, inaccuracy, omission or any other material shortcoming in the text of the tender documents.

Further information will be sent simultaneously to all tenderers who have requested the specification in writing, where this is appropriate. Tenderers who have downloaded the documents from the Directorate-General Energy and transport website (DG TREN) are invited to consult this site regularly until the deadline for submission.

After the opening of tenders

If a tender requires clarification, or if there is a need to correct material errors which have occurred in the drafting of the tender, the Commission may take the initiative and contact the tenderer(s). Such contact shall not lead to the conditions of the tender being altered in any way.

10. This invitation to tender is in no way binding on the Commission. A commitment will come about only when a Contract with the successful tenderer has been signed.

Until a Contract is signed, the awarding authority may decide not to award a Contract or to cancel the tendering procedure, without the candidates or tenderers being entitled to claim any compensation. Where appropriate, the decision will be substantiated and brought to the attention of the tenderers.

11. Tenderers will be informed of whether their tenders have been accepted or rejected.
12. The follow-up of your response to the invitation to tender will require the recording and further processing of personal data (i.e. name, address, CV, etc.). This data will be processed in accordance with the requirements of Regulation (CE) 45/2001 on the protection of individuals with regard to the processing of personal data by Community institutions and

bodies and on the free movement of such data. Unless if otherwise stated, replies to questions and personal data requested are necessary for the purpose of assessing your tender (according to the specifications of the invitation to tender) and will only be processed within DG TREN as data controller, for this purpose. You may, upon request, have your personal data sent to you and rectify any inaccurate or incomplete particulars. Should you have any queries concerning the processing of your personal data, please address them to the entity acting as data controller within DG TREN. As regards the processing of your personal data, you have the right to bring the matter before the European Data Protection Supervisor at any time.

13. You are informed that for the purposes of safeguarding the financial interest of the Communities, your personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF).

Data of economic operators which are in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation may be included in a central database and communicated to the designated persons of the Commission, other institutions, agencies, authorities and bodies mentioned in Article 95(1) and (2) of the Financial Regulation. This refers as well to the persons with powers of representation, decision making or control over the said economic operators. Any party entered into the database has the right to be informed of the data concerning it, up on request to the accounting officer of the Commission.

Candidates or tenderers and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations mentioned in:

- the Commission Decision of 16.12.2008 on the Early Warning System (EWS) for the use of authorising officers of the Commission and the executive agencies (OJ, L 344, 20.12.2008, p. 125), or
- the Commission Regulation of 17.12.2008 on the Central Exclusion Database – CED (OJ L 344, 20.12.2008, p. 12),

their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the EWS only or both in the EWS and CED, and communicated to the persons and entities listed in the above-mentioned Decision and Regulation, in relation to the award or the execution of a procurement contract or a grant agreement or decision.

Yours faithfully,

Signed

Fotis Karamitsos

Director

TENDER SPECIFICATIONS
ATTACHED TO THE INVITATION TO TENDER

**Invitation to tender No. TREN/G3/316-1/3-2008 concerning
GALIFREGS (Galileo Frequency Regulatory Support) Contract**

TABLE OF CONTENTS

I	SPECIFICATIONS
I.1	INTRODUCTION
I.2	PURPOSE OF THE CONTRACT
I.3	REPORTS AND DOCUMENTS TO PRODUCE - TIMETABLE TO OBSERVE
I.3.1	<i>INTERIM REPORT(S)</i>
I.3.2	<i>FINAL REPORT</i>
I.3.3	<i>REPORT FORMAT AND PUBLICATION</i>
I.4	DURATION OF THE TASKS
I.5	PLACE OF PERFORMANCE
I.6	ESTIMATE OF THE AMOUNT OF WORK INVOLVED
II	TERMS OF CONTRACT
II.1	TERMS OF PAYMENT
II.2	FINANCIAL GUARANTEES
II.3	SUBCONTRACTING
II.4	LEGAL FORM TO BE TAKEN BY THE GROUPING OF SERVICE PROVIDERS TO WHOM THE CONTRACT IS AWARDED (IF APPLICABLE)
III	FORM AND CONTENT OF THE TENDER
III.1	GENERAL
III.2	STRUCTURE OF THE TENDER
III.2.1	<i>FIRST SECTION: ADMINISTRATIVE PROPOSAL</i>
III.2.2	<i>SECOND SECTION: TECHNICAL PROPOSAL</i>
III.2.3	<i>THIRD SECTION: FINANCIAL PROPOSAL</i>
IV	ASSESSMENT AND AWARD OF THE CONTRACT
IV.1	EXCLUSION CRITERIA - EXCLUSION OF TENDERERS
IV.1.1	<i>EXCLUSION CRITERIA (ART. 93 OF FINANCIAL REGULATION)</i>
IV.1.2	<i>OTHER CASES OF EXCLUSION</i>
IV.1.3	<i>EVIDENCE TO BE PROVIDED BY THE TENDERERS</i>
IV.1.4	<i>ADMINISTRATIVE AND FINANCIAL PENALTIES</i>
IV.2	SELECTION CRITERIA – SELECTION OF TENDERERS
IV.2.1	<i>ECONOMICAL AND FINANCIAL CAPACITY – REFERENCES REQUIRED</i>
IV.2.2	<i>TECHNICAL AND PROFESSIONAL CAPACITY – REFERENCES REQUIRED</i>
IV.3	EVALUATION OF TENDERS - AWARD CRITERIA
IV.4	INFORMATION FOR TENDERERS
V	ANNEXES

I. SPECIFICATIONS

I.1. Introduction

Galileo and EGNOS both depend on access to radio frequency bands that are internationally designated for satellite navigation. Fundamental for this are activities carried out at the International Telecommunication Union (ITU) and its European equivalent, the European Conference of Postal and Telecommunications Administrations (CEPT), that set parameters for radio service operations worldwide. In addition, all satellite systems have to notify the ITU of the frequency bands they intend to use.

As part of its mandate, the European Commission, Directorate General for Transport and Energy (hereinafter referred to as "DG-TREN") has a key role in the coordination of member states' actions in respect of the frequencies necessary to ensure the operation of the Galileo and EGNOS. Therefore, DG-TREN has to monitor and participate in the activities of the ITU and CEPT to ensure Galileo and EGNOS have equitable access to spectrum used by satellite navigation systems and that they can operate without interference from other radio systems. DG-TREN also has to oversee the ITU notification process for Galileo and EGNOS operations and be aware of how other systems plan to use frequency bands that may be shared with Galileo and EGNOS.

I.2. Purpose of the Contract

This aim of this Contract is for the provision of continuous technical support to DG-TREN on all the frequency regulatory actions regarding Galileo and EGNOS, including but not exclusively those involving the ITU and CEPT for a period of 30 months. It will cover two main activities:

1. Preparations for WRC-12 (taking place during the first quarter of 2012) and other work developing or modifying International or European radio regulations or recommendations;
2. Application of the Radio Regulations on behalf of Galileo and EGNOS.

To this end, the Contractor will be requested to provide this support to and on behalf of DG-TREN in respect of Galileo and EGNOS interests at relevant meetings at national or international level. The Contractor will be expected to prepare, attend and represent DG-TREN at these meetings and report back to DG-TREN on the work of the meeting and specific actions that may be required.

List of Acronyms

APT	Asia Pacific Telecommunications
BR-IFIC	ITU Radio Bureau - International Frequency Information Circular
CEPT	Conférence Européenne des Postes et Télécommunications
CITEL	Inter-American Telecommunications Commission
CPG	Conference Preparatory Group of CEPT
EGNOS	European Geostationary Navigation Overlay Service
ETSI	European Telecommunications Standards Institute

GNSS	Global Satellite Navigation System
ITU	International Telecommunication Union
ITU-R	International Telecommunication Union (Radio division)
RNSS / RDSS	Radionavigation / Radiodetermination satellite service - ITU radio service categories
TC-SES	Technical Committee for Satellite Earth Stations & Systems
WP4C or 5B	Working Party 4C or 5B of the ITU-R
WRC	World Radiocommunication Conference

Characteristics of Support to Galileo Frequency Regulatory Contract

The Support to Galileo Frequency Regulatory Contract shall comply with the requirements described in this section.

Statement of Works to be performed

The contract will be subdivided into two main activities which are distinct and independent:

Activity 1 - Regulations: Development (about 85% of workload)

Task 1: WRC Preparations

Task 2: Non-WRC Issues

Activity 2 - Regulations: Application (about 15% of workload)

Task 3: ITU Satellite Filings and Coordination

Please note that some flexibility will be required for the tasks defined, depending on the evolution of the work within the various regulatory fora.

Activity 1 – Regulations: Development

TASK 1 – WRC preparations

Description

Every three to five years, in response to proposals by industry and national administrations, the ITU hosts a WRC that decides what changes are required to the UN-ratified *Radio Regulations* (which defines what frequency bands can be used by different radio services). Galileo and EGNOS use for their service links "radionavigation satellite service" (RNSS) frequency bands and it is thus important that decisions made at WRCs do not unduly impact current or future Galileo/EGNOS operations.

A WRC will only modify the Radio Regulations if technical studies show that changes are compatible with existing services and do not cause significant interference. Previous WRCs have considered adding frequency bands for RNSS use and also whether to allow aeronautical communications to share with RNSS around 5GHz – both of which required extensive compatibility studies to be carried out.

This task is to help DG-TREN achieve its objectives at the next World Radio Conference (WRC). The primary objectives are:

1. A new global primary allocation to the radio determination satellite service at 2.5 GHz;
2. Protection of radionavigation satellite service spectrum, particularly at 5GHz;
3. To ensure radionavigation satellite service spectrum in other bands are not unduly affected by any potential new allocations.

The Contractor shall engage in the ITU and CEPT WRC preparations and study process to act on behalf of DG-TREN to further the interests and help achieve the aims of Galileo/EGNOS at the next WRC and in this regard may be required to carry out relevant, detailed and specific technical analysis. Support will be required at ITU, CEPT, regional and national level.

ITU

ITU-R Working Parties 4C and 5B will consider RNSS issues for the next WRC agenda. Normally two or three meetings each of WP4C and 5B, covering WRC and non-WRC issues, occur each year, depending on the workload for the next conference and other issues. WP4C and 5B provide technical recommendations to the WRC in the form of a CPM Report on the WRC agenda items for which they are responsible. Each ITU meeting is between seven to fourteen days duration and usually held in Geneva.

CEPT

The European Conference Preparatory Group (CPG) prepares CEPT positions for the next WRC, and decides how the work is carried out by CEPT project teams and monitors their progress. CPG meets two or three times per year, and its various project teams, which carry out the technical work, each meet three to four times each per year. RNSS related activities will be carried out by CPG project teams PT-C and PT-D, which prepare the European Common Proposals (ECP) to the WRC (after formal approval by CPG). Each CEPT meeting is two to three days duration and is held in a CEPT country.

National

National positions are prepared in advance of CEPT meetings and it is important for DG-TREN to have some input mechanism to that decision making process. The Contractor shall participate in key national preparation events in order to promote and defend the interests of Galileo.

Regional Activities

WRCs are strongly influenced by regional positions. The Contractor will be expected to be aware of all regional preparations and have dedicated regional representation in CITELE, APT and the Arab Group and/or the ATU to influence respective positions on behalf of Galileo.

TASK 2 – non-WRC issues

Description

This work item requires the Contractor to monitor, report on and actively participate in work at the ITU and CEPT on RNSS regulatory issues such as ITU-R Recommendations for sharing between different radio services, including satellite navigation, particularly where they may affect Galileo and EGNOS. These tasks may require the Contractor to conduct more detailed and specific technical analysis to carry out the work effectively and act on behalf of DG-TREN to further the interests of Galileo/EGNOS.

ITU

WP4C and 5B both develop ITU-R Recommendations for RNSS and related services; this work is independent from WRC activities, but takes place at the same meetings. Currently ITU-R WP4C is reviewing and rationalising all RNSS Recommendations and WP5B is assessing the potential interference from RNSS systems to radars in the band 1215-1300 MHz, with a view to developing an ITU-R Report.

CEPT

Europe contributes to the non-WRC ITU work on a regional basis and sometimes with national contributions direct to ITU-R. CEPT also carries out non-WRC work affecting only Europe. CEPT project team SE40 conducts technical work on RNSS and MSS issues, which is regularly reviewed and assigned new tasks by higher level CEPT groups. In addition the activities of non-technical regulatory groups (e.g. FM44) that may be tasked with RNSS related activities should be covered. Although not a CEPT body, ETSI carries out specific activities that may need to be tracked - such as work developing a standard for RNSS repeaters.

Activity 1 Deliverables

- preparation of timely, agreed inputs to the meetings necessary to achieve Galileo's objectives at each meeting
- attendance at relevant meetings
- brief written summary reports from each meeting
- brief ad-hoc regulatory and strategy advice to DG-TREN

Activity 2: Regulations: Application

TASK 3 - ITU Satellite Filings and Coordination

Description

For this work item the Contractor will be required to monitor ITU satellite filings for new or modified satellite systems that notify the ITU of their intention to use particular frequency bands, analyse potential impacts on Galileo and respond to those filings that may cause interference. In some instances, if interference is suspected, more detailed technical analysis and direct negotiation with other operators may be required, sometimes at meetings outside Brussels.

Monitor BR-IFIC

Every two weeks the ITU issues a list (BR-IFIC) of new filings, detailing proposed new systems and their radio characteristics. The ITU notifies Administrations of potential interference problems that could result, but in practice it is the Administrations and operators who are proactive in this regard, to protect their interests. To make the task easier the BR-IFIC uses common database format that can be analysed automatically with the appropriate software.

The Contractor will be expected to subscribe to, and receive, the BR-IFIC every two weeks and alert DG-TREN and respond to the ITU within target response times to be agreed. Once initial issues are identified (e.g. frequency overlap), the Contractor will draft a response and, with DG-TREN approval, send it to the appropriate Administration for the filings, who in turn send it to the operator of the proposed system (copied to the ITU). Further more detailed analysis may be required in some cases.

ITU Coordination

If the potential interference is not resolved via correspondence, an official bilateral ITU Coordination meeting has to occur, where both sides have to agree before the new satellite network can claim to be "Coordinated" and given the 'OK' to transmit. The Contractor will be required to provide technical support and attend these meetings to which ESA also contributes. These coordination meetings may take place several times per year, normally in Brussels, but potentially worldwide. It is anticipated that no more than 13 meetings will be required during the period of contract.

Galileo Filings MoU (Memorandum of Understanding)

A number of European Union Member States have ITU satellite filings that can support the Galileo mission. These filings are managed under a MoU between the majority of European Member States. A steering committee of this group meets once or twice per year in Europe. The Contractor will be required to attend and support the EC at these meetings, which may require detailed analysis. It is anticipated that no more than five meetings will be required during the period of contract.

Resolution 609

Galileo will use the band 1164-1215MHz to which a special group addresses the aggregate emission from all RNSS system operating in this band with a view to protection of aviation navigation aids. The Contractor will be required to support Galileo's participation in the Resolution 609 consultation meetings. This will involve performing detailed technical calculations for Galileo's emissions and verifying those of other systems. It is anticipated that no more than two meetings will be required during the period of contract.

Activity 2 Deliverables

- monitoring BR-IFIC with respect to Galileo interests
- specific analysis of any potential filing conflicts that affect Galileo when they are required
- drafting appropriate responses to the ITU if required
- attendance and brief written summary reports from each meeting
- brief ad-hoc regulatory and strategy advice to DG-TREN
- preparation of inputs to the meetings as necessary to achieve Galileo's objectives

I.3. Reports and documents to produce - Timetable to observe

Execution of the tasks begins after the kick-off meeting date (T0) but in any case after the Contract enters into force.

A kick-off meeting will take place in Brussels no later than 30 days following the signature of the Contract, in order to discuss and settle all the details of the work to be undertaken.

Reports and documents to produce must be written in English language.

I.3.1. Interim reports

Interim reports reflecting work accomplished and showing progress of both activities shall be submitted to DG TREN at T0+3, 6, 12, 18 and 24 months.

The Commission shall have twenty days from receipt to approve or reject reports. Within 20 days of receiving the Commission's observations, the Contractor will submit additional information or another report.

I.3.2. Summary meeting reports

Summary meeting reports shall be submitted by the Contractor within two weeks after each ITU/CEPT meeting attended. Reports written in English shall be provided in MS Word (2003) format. In some cases where a particular issue requires attention a more detailed report may be requested by DG-TREN within three weeks after the meeting. The Contractor shall provide this detailed report within a schedule to be agreed at the time.

I.3.3. Final reports

The Contractor will submit:

#1. a draft final report on WRC issues to the Commission at the latest one month after the WRC finishes;

#2. a draft final report on all other issues including a preliminary analysis of the regulatory preparations required for the next WRC after WRC-12 at the latest one month after the completion of the tasks.

Within 45 days after the submission of draft final report #2 the Commission will provide the Contractor with its comments on the draft final report and the date of a wrap-up meeting in Brussels will be agreed in order for the Contractor to present a summary of work carried out and to discuss the Commission's observations.

After this meeting, the Contractor shall have 20 days in which to submit additional information or a new final report if required.

I.3.4. Report format and publication

One copy of the report shall be supplied in paper form and one copy in electronic form in MS Word format.

The Commission may publish the results of the study. For this purpose, the tenderer must ensure that the study is not subject to any restrictions deriving from intellectual property rights of third parties. If the Contractor intends to use data in the study, which cannot be published, this must be explicitly mentioned in the offer.

I.4. Duration of the tasks

The duration of the tasks shall not exceed 30 months. The global duration of the Contract shall not exceed 35 months.

I.5. Place of performance

The tasks will be performed at the Contractor's premises or meeting venues. However, meetings between the Contractor and the Commission may be held at Commission's premises in Brussels (unless agreed otherwise).

I.6. Estimate of the amount of work involved

DG TREN estimates that 800 man-days of effort will be required to complete the defined tasks.

II. TERMS OF CONTRACT

In drawing up his offer, the tenderer should bear in mind the provisions of the draft Contract attached to this invitation to tender (Annex 5). Any limitation, amendment or denial of the terms of Contract will lead to automatic exclusion from the procurement procedure.

The Commission may, before the Contract is signed, either abandon the procurement procedure or cancel the award procedure without the tenderers being entitled to claim any compensation.

II.1. Terms of payment

Payments shall be made in accordance with the provisions specified in Annex 5, the draft service Contract

II.2. Financial guarantees

Guarantee on pre-financing

For any pre-financing higher than 100,000 EUR, a financial guarantee equivalent to the amount of the pre-financing will be requested.

Depending on the financial situation of the tenderer, the Commission may ask for the financial guarantee for amounts lower than 100,000 EUR.

II.3. SubContracting

If the tenderer intends to subContract part of the service, he shall indicate in his offer which part will be subContracted and to what extent (% of the total Contract value).

Tenderers must ensure that Article II.17 of the Contract (Annex 5) can be applied to subContractors. Once the Contract has been signed, Article II.13 of the above-mentioned Contract shall govern the subContracting.

II.4. Legal form to be taken by the grouping of service providers to whom the Contract is awarded (if applicable)

Groupings, irrespective of their legal form, may submit bids. Tenderers may, after forming a grouping, submit a joint bid on condition that it complies with the rules of competition. Such groupings (or consortium) must specify the company or person heading the project and must also submit a copy of the document authorising this company or person to submit a bid. If awarded, the Contract will be signed by the company or the person heading the project, who will be, vis à vis the Commission, the only Contracting party responsible for the performance of this Contract. Tenders from a consortium of firms or groups of service providers, Contractors or suppliers must specify the role, qualifications and experience of each member of the consortium or group. Each member must provide all the necessary documents for assessing the bid as a whole with regard to the exclusion criteria, selection criteria (in their entirety) and award criteria.

III. FORM AND CONTENT OF THE TENDER

III.1. General

Tenders must be written in **one of the official languages** of the European Union. However, and due to the technical nature of the project, tenderers are invited to submit their bids (or at least the technical part thereof) preferably in **English**.

Tenders must be clear and concise, with continuous page numbering, and assembled in a coherent fashion (e.g. bound or stapled, etc...). Since tenderers will be judged on the content of their written bids, they must make it clear that they are able to meet the requirements of the specifications.

III.2. Structure of the tender

All tenders must include three sections i.e. an administrative, a technical and a financial proposal.

III.2.1. Section One: administrative proposal

This section must provide the following information, set out in the standard identification forms attached to these tender specifications (Annexes 1, 2 and 3):

- Tenderers' identification (Annex 1)

- All tenderers must provide proof of **registration**, as prescribed in their country of establishment, on one of the **professional or trade registers** or provide a declaration or certificate.
- If the tenderer is a natural person, he/she must provide a copy of the identity card/passport or driving licence and proof that he/she is covered by a social security scheme as a self-employed person.

Each tenderer (including subContractor(s) or any member of a consortium or grouping) must complete and sign the identification forms in Annex 1 and also provide above-mentioned documents. However, the subContractor(s) shall not be required to fill in or provide those documents when the services represent less than 20% of the Contract.

- Financial identification (Annex 2)

The **bank identification form** must be filled in and signed by an authorised representative of the tenderer and his/her banker. A standard form is attached in Annex 2 and a specific form for each Member State is available at the following Internet address:

http://ec.europa.eu/budget/execution/ftiers_en.htm

In the case of a grouping, this form must only be provided by the person heading the project.

- Legal entities (Annex 3)

The legal entity form in Annex 3 must be filled in and should be accompanied by a number of supporting documents, available on the Web site:

http://ec.europa.eu/budget/execution/legal_entities_en.htm

In the case of a grouping, this form must only be provided by the person heading the project.

The Commission reserves the right, however, to request additional evidence in relation to the bid submitted for evaluation or verification purposes within a time-limit stipulated in its request.

III.2.2. Section Two: Technical proposal

This section is of great importance in the assessment of the bids, the award of the Contract and the future execution of any resulting Contract.

Some guidelines are given below, but attention is also drawn to the award criteria, which define those parts of the technical proposal to which the tenderers should pay particular

attention. The technical proposal should address all matters laid down in the specifications and should include models, examples and technical solutions to problems raised in the specifications. The level of detail of the tender will be extremely important for the evaluation of the tender. Tenderers must present in their bids a proposal on the methodology and the organisation of the work to be carried with respect to the Contract. Tenderers shall provide a detailed proposal of how each task would be carried out, and by whom, including the division of work among the different categories of staff

The technical proposal must provide all the information needed for the purpose of awarding and signing the Contract.

III.2.3. Section Three: Financial proposal

All tenders must contain a financial proposal. The tenderer's attention is drawn to the following points:

- Prices must be quoted in **Euros**, including the countries which are not in the euro-area. As far as the tenderers of those countries are concerned, they cannot change the amount of the bid because of the evolution of the exchange rate. The tenderers choose the exchange rate and assume all risks or opportunities relating to the rate fluctuation.
- Prices must be fixed amounts and include all expenses, such as travel expenses and accommodation costs.
- **Prices should be quoted free of all duties, taxes and other charges, i.e. also free of VAT**, as the Communities are exempt from such charges in the EU under Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (OJ L 152 of 13 July 1967). Exemption is granted to the Commission by the governments of the Member States, either through refunds upon presentation of documentary evidence or by direct exemption. For those countries where national legislation provides an exemption by means of a reimbursement, the amount of VAT is to be shown separately. In case of doubt about the applicable VAT system, it is the tenderer's responsibility to contact his or her national authorities to clarify the way in which the European Community is exempt from VAT;
- **Prices shall be** fixed and not subject to revision during the performance of the Contract;
- For each category of staff involved in the project, the tenderer must specify:
 - the total labour costs;
 - **the daily rates** and **total number of days** (man/days) each member of staff will contribute to the project;
 - other categories of costs, indicating the nature of the cost, the total amount, the unit price and the quantity.

Bids involving more than one service provider (consortium) must specify the amounts indicated above for each provider.

IV. ASSESSMENT AND AWARD OF THE CONTRACT

The assessment will be based on each tenderer's bid.

All the information will be assessed in the light of the criteria set out in these specifications. The procedure for the award of the Contract, which will concern only admissible bids, will be carried out in three successive stages.

The aim of each of these stages is:

- 1) to check on the basis of the exclusion criteria, whether tenderers can take part in the tendering procedure;
- 2) to check on the basis of the selection criteria, the technical and professional capacity and economic and financial capacity of each tenderer;
- 3) to assess on the basis of the award criteria each bid which has passed the exclusion and selection stages.

IV.1. Exclusion criteria (exclusion of tenderers)

IV.1.1. Exclusion criteria (Article 93 Financial Regulation¹)

1. To be eligible for participating in this Contract award procedure, tenderers must not be in any of the following situations:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the Contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Contracting authority or those of the country where the Contract is to be performed;
- (e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) they are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation² for being guilty of misrepresentation in supplying the information required by the Contracting authority as a condition of participation in a Contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for

¹ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248 of 16.9.2002)

² Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p. 1, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006, OJ L 390 of 30 December 2006, p.1.

having been declared to be in serious breach of their obligations under Contracts or grants covered by the Community budget.

2. The cases referred to in point IV.1.1. e) above shall be the following:
 - a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests established by the Council Act of 26 July 1995 (OJ/C 316 of 27.11.1995, p. 48);
 - b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, established by the Council Act of 26 May 1997 (OJ/C 195 of 25.6.1997, p. 1);
 - c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council (OJ/L 315 of 29.12.1998, p. 1);
 - d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC (OJ/L 166 of 28.6.1991, p.77).

IV.1.2. Other cases of exclusion (Article 94 Financial Regulation)

Contracts will not be awarded to tenderers who, during the procurement procedure:

- a) **are subject to a conflict of interest;**

Tenderers must declare:

- that they do not have any conflict of interest in connection with the Contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties, or any other relevant connection or shared interest;
- that they will inform the Contracting authority, without delay, of any situation constituting a conflict of interest or which could give rise to a conflict of interest;
- that they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract;
- that they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to the award of the Contract.

The Commission reserves the right to check the above information.

- b) **are guilty of misrepresentation** in supplying the information required by the Contracting authority as a condition of participation in the procurement procedure or fail to supply this information.
- c) find themselves in one of the **situations of exclusion**, referred to in paragraph IV.1.1. above for this procurement procedure.

IV.1.3. Evidence to be provided by the tenderers

1. When submitting their bids, each tenderer (including subContractor(s) or any member of a consortium or grouping) shall provide a declaration on their honour, duly signed

and dated, stating that they are not in one of the situations mentioned above (cf. IV.1.1 and VI.1.2). For that purpose, they must complete and sign the form attached in Annex 4. Where the tenderer is a legal entity, they shall, whenever requested by the Commission, provide information on the ownership or on the management, control and power of representation of the legal entity.

2. The tenderer to whom the Contract is to be awarded shall provide, within 15 calendar days after notification of the results of the procurement procedure and in any case before the signature of the Contract, the following evidence, confirming the declaration referred to above:

The Commission shall accept, as satisfactory evidence that the tenderer is not in one of the situations described in point IV.1.1 (a), (b) or (e) above, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.

The Commission accepts, as satisfactory evidence that the tenderer is not in the situation described in point IV.1.1 (d) above, a recent certificate issued by the competent authority of the State concerned.

Where no such document or certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

3. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraph 1 and 2 above shall relate to legal and/or natural persons including, if applicable with regard to points b) and e), company directors or any person with powers of representation, decision-making or control in relation to the tenderer.
4. When the subContracted part is above 20% of the Contract value, the subContractor(s) must also provide the above-mentioned declaration on honour. In case of doubt on this declaration on the honour, the Contracting authority may also request the evidence referred to in paragraphs 2 and 3 above.
5. The Commission reserves the right to request any other document relating to the proposed tender for evaluation and verification purpose, within a delay determined in its request.

Remark:

The tenderers will be waived of the obligation to submit the documentary evidence above mentioned if such evidence has already been submitted for the purposes of another procurement procedure launched by Directorate General for Energy and Transport and provided that the documents are not more than one year old starting from their issuing date and that they are still valid. In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure, specifying the reference of the call for tender for which the documents have been provided, and confirm that no changes in his situation have occurred.

IV.1.4. Administrative and financial penalties

Without prejudice to the application of penalties laid down in the Contract, candidates or tenderers and Contractors who have been found guilty of misrepresentation in supplying the information required by the Contracting authority as a condition of participation in the procurement procedure or have failed to supply this information or have been declared to be in serious breach of their obligations under Contracts covered by the Community budget may be subject to administrative or financial penalties, in accordance with Article 96 of the Financial Regulation and Articles 134b and 133a of the Implementing Rules.³

IV.2. SELECTION CRITERIA (SELECTION OF TENDERERS)

To be eligible, the tenderers must have the economic and financial capacity as well as the technical and professional capacity to perform the tasks required in this call for tender.

IV.2.1. Economic and financial capacity – References required

Tenderers must provide proof of their financial and economic capacity by means of the following documents: the balance sheets or extracts from balance sheets for the last three financial years, and a statement of overall turnover and turnover relating to the relevant services for the last three financial years.

This rule applies to all service providers, regardless of the percentage of tasks they intend to execute, once they have chosen to submit a tender. However, if the tender includes subContractors whose tasks represent less than 20% of the Contract, those subContractors are not obliged to provide evidence of their economic and financial capacity.

IV.2.2. Technical and professional capacity – References required

Tenderers must provide supporting evidence that staff within the company have at least the following technical and professional competences:

- Seven or more years of experience in ITU regulatory matters (particularly for RNSS) and the working methods of the ITU and CEPT;
- Very good knowledge of the radio regulatory history of RNSS since 1999;
- Very good understanding of the ITU procedures for satellite filings and their analysis;
- Four years of experience dealing with satellite coordination matters and meetings
- Very good network of contacts within European National Regulatory Authorities (NRAs) and industry;
- Good network of contacts within NRAs and industry outside Europe;

³ Commission Regulation (EC, Euratom) n° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 357 of 31 December 2002, p. 1, last amended by Commission Regulation (EC, Euratom) n° 478/2007 of 23 April 2007, OJ L 111 of 28 April 2007, p.1.

- Very good knowledge of the Galileo system and of other GNSS systems and how they relate to each other.

Tenderers shall describe and clearly illustrate, as part of their proposal all relevant prior experience beneficial to effectively perform the work requested. This should be in the form of a list of the key services and tasks delivered during the last five years as well as indicative amounts, dates and beneficiaries with mention of the sector they belong to (private/public).

If several service providers/subContractors are involved in the bid, each of them must have and show that they have the professional and technical capacity to perform the tasks assigned to them.

Tenderers should provide with their offer detailed curriculum vitae of each staff member responsible for carrying out the work, including his or her educational background, degrees and diplomas, professional experience, research work, publications and linguistic skills.

The CV's shall be presented, preferably, in accordance to the Commission Recommendation on a common European format for curricula vitae, published in OJ L79 of 22 March 2002, p. 66.

IV.3. EVALUATION OF TENDERS – AWARD CRITERIA

The Contract will be awarded according to the criteria given below, on the basis of the economically most advantageous tender.

Only bids that have reached a total score of a minimum of 70% and a minimum score of 60 % for each criterion will be taken into consideration for awarding the Contract.

a) Technical evaluation criteria as weighted (70%)

N°	Award Criteria	Weighting
1	Understanding of the requirements and objectives <ul style="list-style-type: none"> • Tenderer's analysis of requirements and EC's needs • Critical review of the requirements • Understanding of the environment under which the project is conducted 	30
2	Quality and suitability of proposed tender <ul style="list-style-type: none"> • Quality of the technical proposal • Confidence that the complete proposal is appropriate to meet the EC's requirements • Preliminary analysis of solutions to potential regulatory challenges facing Galileo 	40
3	Adequacy of resource allocation and proposed team <ul style="list-style-type: none"> • Adequacy of the effort allotted to each task • Adequacy of the proposed team • Coverage of regional activities 	30
Total number of points		100

b) Total price (30%)

The contract will be awarded to the tenderer which offers the best quality price score as measured by the following formula:

score for tender X	=	$\frac{\text{cheapest price}}{\text{price of tender X}}$	*	price weighting (in absolute value)	+	$\frac{\text{total quality score (out of 100) for all award criteria of tender X}}{100}$	*	quality criteria weighting (in absolute value)
--------------------	---	--	---	--	---	--	---	---

IV.4. INFORMATION FOR TENDERERS

The Commission will inform tenderers of decisions reached concerning the award of the Contract, including the grounds for any decision not to award a Contract or to recommence the procedure.

Upon written request, the Commission will inform the rejected tenderers of the reasons for their rejection and the tenderers having submitted an admissible tender of the characteristics and relative advantages of the selected tender and the name of the successful tenderer.

However, certain information may be withheld where its release would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.

V. ANNEXES

Identification of the Tenderer

Financial Identification

Legal Entity Form

Declaration by the Tenderer (relating to the exclusion criteria)

Draft Service Contract

ANNEX 1

IDENTIFICATION OF THE TENDERER

(Each service provider, including subContractor(s) or any member of a consortium or grouping, must complete and sign this identification form)

Call for tender TREN/G3/316-1/3-2009

Identity	
Name of the tenderer	
Legal status of the tenderer	
Date of registration	
Country of registration	
Registration number	
VAT number	
Description of statutory social security cover (at the level of the Member State of origin) and non-statutory cover (supplementary professional indemnity insurance) ⁴	
Address	
Address of registered office of tenderer	
Where appropriate, administrative address of tenderer for the purposes of this invitation to tender	
Contact Person	
Surname: First name: Title (e.g. Dr, Mr, Ms) : Position (e.g. manager): Telephone number: Fax number: E-mail address:	
Legal Representatives	

Names and function of legal representatives and of other representatives of the tenderer who are authorised to sign Contracts with third parties	
Declaration by an authorised representative of the organisation⁵ I, the undersigned, certify that the information given in this tender is correct and that the tender is valid.	
Surname: First name:	Signature:

⁵ This person must be included in the list of legal representatives; otherwise the signature on the tender will be invalidated.

ANNEX 2

(to be completed by the tenderer and his or her financial institution)

The tenderer's attention is drawn to the fact that this document is a model and that a specific form for each Member State is available at the following Internet address:

http://ec.europa.eu/budget/execution/ftiers_en.htm

ANNEX 3

Legal entity form

Complete the legal entity form, which should be accompanied by a number of supporting documents, available on the Web site:

http://ec.europa.eu/budget/execution/legal_entities_en.htm

Please note that we can only accept either original documents or certified copies, which must be less than 6 months old.

In the case of a grouping, this form must only be provided by the person heading the project.

ANNEX 4

DECLARATION BY THE TENDERER

Each service provider, including subContractor(s) or any member of a consortium or grouping, must sign this declaration

1. In accordance with Article 93 of the Financial Regulation⁶, I declare on my honour that I am not in any of the following situations which would exclude me from participating in this procurement procedure:
 - a) I am not bankrupt, being wound up or having my affairs administered by the courts, I have not entered into an arrangement with creditors, I have not suspended business activities, I am not the subject of proceedings concerning any such matters, and I am not in any similar situation arising from a similar procedure provided for in legislation or regulations;
 - b) I have not been convicted of an offence concerning my professional conduct by a judgment which has the force of res judicata;
 - c) I have not been found guilty of grave professional misconduct proven by any means which the Contracting authority can justify;
 - d) I have not failed to fulfil obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which I am established or with those of the country or the Contracting authority or those of the country where the Contract is to be performed;
 - e) I have not been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
 - f) I am currently not subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation for being guilty of misrepresentation in supplying the information required by the Contracting authority as a condition of participation in a Contract procurement procedure or by the authorising officer as a condition of participation in a grant award procedure, for failing to supply this information or for having been declared to be in serious breach of their obligations under Contracts or grants covered by the Community budget.
2. In addition, the undersigned declares on his or her honour:
 - a) that on the date of submission of the tender, the company or organisation I do represent and the staff proposed for this tender are not subject to a conflict of interests in the context of this invitation to tender; I undertake to inform the Commission without delay of any change to this situation after the date of submission of the tender.
 - b) that the information provided to the Commission within the context of this invitation to tender is accurate, sincere and complete.

⁶ Council Regulation (EC, Euratom) n° 1605/2002 of 25 June 2002 on the Financial regulation applicable to the general budget of the European Communities, OJ L 248 of 16 September 2002, p. 1, amended by Council Regulation (EC, Euratom) n° 1995/2006 of 13 December 2006, OJ L 390 of 30 December 2006, p.1.

Done at on.....

Name

Title

Signature:

ANNEX 5



EUROPEAN COMMISSION

Directorate-General for Energy and Transport

Directorate G – Maritime transport, Galileo and Intelligent transport

Unit G3

DRAFT SERVICE CONTRACT

CONTRACT NUMBER – []

The European Community (hereinafter referred to as "the Community"), represented by the Commission of the European Communities (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this Contract by Mr Fotis Karamitsos , Director in the Directorate-General for Energy and Transport, Directorate G – Maritime transport, Galileo & Intelligent transport

of the one part,

and

[official name in full]

[official legal form]

[statutory registration number]

[official address in full]

[VAT registration number]

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this Contract by [name in full and function,]

of the other part,

HAVE AGREED

the **Special Conditions** and the **General Conditions** below and the following Annexes:

Annex I – Tender Specifications (Invitation to Tender No [] of []) and Monitoring

Annex II – Contractor's Tender (No [] of [])

which form an integral part of this Contract (hereinafter referred to as “the Contract”).

The terms set out in the Special Conditions shall take precedence over those in the other parts of the Contract. The terms set out in the General Conditions shall take precedence over those in the Annexes. The terms set out in the Tender Specifications (Annex I) shall take precedence over those in the Tender (Annex II).

Subject to the above, the several instruments forming part of the Contract are to be taken as mutually explanatory. Ambiguities or discrepancies within or between such parts shall be explained or rectified by a written instruction issued by the Commission; subject to the rights of the Contractor under Article I.7 should he dispute any such instruction.

I – SPECIAL CONDITIONS

ARTICLE I.1 - SUBJECT

I.1.1. The subject of the Contract for the provision of continuous technical support to DG-TREN on all the frequency regulatory actions regarding Galileo and EGNOS, including but not exclusively those involving the ITU and CEPT, for a period of 30 months. It will cover two main activities:

- Preparations for WRC-12 (taking place during the first quarter of 2012) and other work developing or modifying International or European radio regulations or recommendations;
- Application of the Radio Regulations on behalf of Galileo and EGNOS.

To this end, the Contractor will be requested to provide this support on behalf of DG-TREN in respect of Galileo and EGNOS interests at relevant meetings at national or international level. The Contractor will be expected to prepare, attend and represent Commission at these meetings and report back to DG-TREN on the work of the meeting and specific actions that may be required.

I.1.2. The Contractor shall execute the tasks assigned to him in accordance with the Tender Specifications annexed to the Contract (Annex I).

ARTICLE I.2 - DURATION

I.2.1. The Contract shall enter into force on the date on which it is signed by the last Contracting party.

I.2.2. Execution of the tasks may under no circumstances begin before the date on which the Contract enters into force.

I.2.3.

The duration of the tasks shall not exceed 30 months. The global duration of the Contract shall not exceed 35 months. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from the kick-off meeting. The period of execution of the tasks may be extended only with the express written agreement of the parties before such period elapses.

ARTICLE I.3 – CONTRACT PRICE

I.3.1. The maximum total amount to be paid by the Commission under the Contract shall be EUR [] covering all tasks executed.

ARTICLE I.4 – PAYMENT PERIODS AND FORMALITIES

Payments under the Contract shall be made in accordance with Article II.4. Payments shall be executed only if the Contractor has fulfilled all his Contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous periods have not been executed as a result of default or negligence on the part of the Contractor.

I.4.1 Interim payments:

Requests for interim payment by the Contractor according to the table below shall be admissible if accompanied by:

- Interim report in accordance with the instructions laid down in Annex I.
- the relevant invoice(s)

provided the report has been approved by the Commission.

The Commission shall have twenty days from receipt to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.

Interim Payment N° (5 in total)	Period	% of the total amount referred to in Article I.3.1 to be paid
Interim Payment 1	T0+3months	20%
Interim Payment 2	T0+6months	20%
Interim Payment 3	T0+12months	20%
Interim Payment 4	T0+18months	20%
Interim Payment 5	T0+24months	10%

Within 30 days of the date on which the reports are approved by the Commission, interim payments (see above table) shall be made.

I.4.3. Payment of the balance:

The request for payment of the balance of the Contractor shall be admissible if accompanied by

- the final report in accordance with the instructions laid down in Annex I
- the relevant invoice

provided the report has been approved by the Commission.

The Commission shall have forty-five days from receipt to approve or reject the report, and the Contractor shall have 20 days in which to submit additional information or a new report.

Within 30 days of the date on which the report is approved by the Commission, payment of the balance corresponding to EUR [] equal to 10 % of the total amount referred to in Article I.3.1 shall be made.

For Contractors established in Belgium, the provisions of the Contract constitute a request for VAT exemption No 450, provided the Contractor includes the following statement in his

invoice(s): “Exonération de la TVA, article 42, paragraphe 3.3 du code de la TVA” or an equivalent statement in the Dutch or German language.

For Contractors established in Italy, the provisions of the Contract constitute a request for VAT exemption, provided the Contractor includes the following statement in his invoice(s): “Operazione non imponibile ai sensi dell’articolo 72, comma 3) paragrafo 3 del D.P.R. n. 633 del 26/10/1972 come

ARTICLE I.5 – BANK ACCOUNT

Payments shall be made to the Contractor’s bank account denominated in euro, identified as follows:

Name of bank:
Address of branch in full:
Exact designation of account holder:
Full account number including codes:
[IBAN code:]

ARTICLE I.6 – GENERAL ADMINISTRATIVE PROVISIONS

Any communication relating to the Contract shall be made in writing and shall bear the Contract number. Ordinary mail shall be deemed to have been received by the Commission on the date on which it is registered by the department responsible indicated below. Communications shall be sent to the following addresses:

Commission:

European Commission
Directorate-General for energy and transports
Directorate G – Maritime transport, Galileo & Intelligent transport
Unit G5 – EU Satellite Navigation Programmes: Legal and Financial Aspects
B-1049 Bruxelles

Contractor:

Mr/Mrs/Ms
[Function]
[Company name]
[Official address in full]

ARTICLE I.7– APPLICABLE LAW AND SETTLEMENT OF DISPUTES

I.7.1. The Contract shall be governed by Community law complemented, where necessary, by the national substantive law of Belgium.

I.7.2. Any dispute between the parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Brussels.

ARTICLE I.8 – DATA PROTECTION

Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. It shall be processed solely for the purposes of the performance, management and follow-up of the Contract by the entity acting as data controller within DG TREN without prejudice to possible transmission to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the Community. The Contractor shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the Contractor have any queries concerning the processing of his personal data, he shall address them to the entity acting as data controller within DG TREN. The Contractor shall have right of recourse at any time to the European Data Protection Supervisor.

ARTICLE I.9 – TERMINATION BY EITHER CONTRACTING PARTY

NA

ARTICLE I.10 – OTHER SPECIAL CONDITIONS

II – GENERAL CONDITIONS

ARTICLE II.1 – PERFORMANCE OF THE CONTRACT

- II.1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- II.1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- II.1.3.** Without prejudice to Article II.3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- II.1.4.** The Contractor must ensure that any staff performing the Contract have the professional qualifications and experience required for the execution of the tasks assigned to him.
- II.1.5.** The Contractor shall neither represent the Commission nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- II.1.6.** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him.

The Contractor shall make provision for the following employment or service relationships with his staff:

- staff executing the tasks assigned to the Contractor may not be given orders direct by the Commission;
 - the Commission may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Commission any right arising from the Contractual relationship between the Commission and the Contractor.
- II.1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on Commission premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Commission shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same Contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff in accordance with this Article.
- II.1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately and on his own initiative record it and report it to the Commission. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

II.1.9. Should the Contractor fail to perform his obligations under the Contract in accordance with the provisions laid down therein, the Commission may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Commission may impose penalties or liquidated damages provided for in Article II.16.

ARTICLE II.2 – LIABILITY

II.2.1. The Commission shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Commission.

II.2.2. The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subContracting under Article II.13. The Commission shall not be liable for any act or default on the part of the Contractor in performance of the Contract.

II.2.3. The Contractor shall provide compensation in the event of any action, claim or proceeding brought against the Commission by a third party as a result of damage caused by the Contractor in performance of the Contract.

II.2.4. In the event of any action brought by a third party against the Commission in connection with performance of the Contract, the Contractor shall assist the Commission. Expenditure incurred by the Contractor to this end may be borne by the Commission.

II.2.5. The Contractor shall take out insurance against risks and damage relating to performance of the Contract if required by the relevant applicable legislation. He shall take out supplementary insurance as reasonably required by standard practice in the industry. A copy of all the relevant insurance Contracts shall be sent to the Commission should it so request.

ARTICLE II.3 - CONFLICT OF INTERESTS

II.3.1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during performance of the Contract must be notified to the Commission in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Commission reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflict of interests. Without prejudice to Article II.1 the Contractor shall replace, immediately and without compensation from the Commission, any member of his staff exposed to such a situation.

II.3.2. The Contractor shall abstain from any contact likely to compromise his independence.

II.3.3. The Contractor declares:

- that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,
- that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

II.3.4. The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract. A copy of the instructions given and the undertakings made in this respect shall be sent to the Commission should it so request.

ARTICLE II.4 – PAYMENTS

II.4.1. Interim payment:

At the end of each of the periods indicated in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- an interim report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer;

If the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations or information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

II.4.2. Payment of the balance:

Within sixty days of completion of the tasks referred to in Annex I the Contractor shall submit to the Commission a formal request for payment accompanied by those of the following documents which are provided for in the Special Conditions:

- a final technical report in accordance with the instructions laid down in Annex I;
- the relevant invoices indicating the reference number of the Contract to which they refer.

If the report is a condition for payment, on receipt the Commission shall have the period of time indicated in the Special Conditions in which:

- to approve it, with or without comments or reservations, or suspend such period and request additional information; or
- to reject it and request a new report.

If the Commission does not react within this period, the report shall be deemed to have been approved. Approval of the report does not imply recognition either of its regularity or of the authenticity, completeness or correctness of the declarations and information enclosed.

Where the Commission requests a new report because the one previously submitted has been rejected, this shall be submitted within the period of time indicated in the Special Conditions. The new report shall likewise be subject to the above provisions.

ARTICLE II.5 – GENERAL PROVISIONS CONCERNING PAYMENTS

II.5.1. Payments shall be deemed to have been made on the date on which the Commission's account is debited.

II.5.2. The payment periods referred to in Article I.4 may be suspended by the Commission at any time if it informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. In case of doubt on the eligibility of the expenditure indicated in the payment request, the Commission may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is eligible.

The Commission shall notify the Contractor accordingly by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period referred to in Article I.4 shall begin to run again once the suspension has been lifted.

II.5.3. In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations (“*the reference rate*”) plus seven percentage points (“*the margin*”). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Commission may not be deemed to constitute late payment.

ARTICLE II.6 – RECOVERY

II.6.1. If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Commission.

II.6.2. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article II.5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

II.6.3. The Commission may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Communities that is certain, of a fixed amount and due. The Commission may also claim against the guarantee, where provided for.

ARTICLE II.7 - REIMBURSEMENTS

N/A

ARTICLE II.8 – OWNERSHIP OF THE RESULTS - INTELLECTUAL AND INDUSTRIAL PROPERTY

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Community, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE II.9 – CONFIDENTIALITY

II.9.1. The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

II.9.2. The Contractor shall obtain from each member of his staff, board and directors an undertaking that they will respect the confidentiality of any information which is linked, directly or indirectly, to execution of the tasks and that they will not divulge to third parties or use for their own benefit or that of any third party any document or information not available publicly, even after completion of the tasks.

ARTICLE II.10 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION

II.10.1. The Contractor shall authorise the Commission to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, the amount paid and the reports. Where personal data is concerned, Article I.8 shall apply.

II.10.2. Unless otherwise provided by the Special Conditions, the Commission shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Commission.

II.10.3. Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the Commission and shall mention the amount paid by the Community. It shall state that the opinions expressed are those of the Contractor only and do not represent the Commission's official position.

II.10.4. The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Commission has specifically given prior written authorisation to the contrary.

ARTICLE II.11 – TAXATION

II.11.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

II.11.2. The Contractor recognises that the Commission is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities.

II.11.3. The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.

II.11.4. Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE II.12 – FORCE MAJEURE

II.12.1. Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the Contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subContractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

II.12.2. Without prejudice to the provisions of Article II.1.8, if either Contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

II.12.3. Neither Contracting party shall be held in breach of its Contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his Contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

II.12.4. The Contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE II.13 – SUBCONTRACTING

II.13.1. The Contractor shall not subContract without prior written authorisation from the Commission nor cause the Contract to be performed in fact by third parties.

II.13.2. Even where the Commission authorises the Contractor to subContract to third parties, he shall none the less remain bound by his obligations to the Commission under the Contract and shall bear exclusive liability for proper performance of the Contract.

II.13.3. The Contractor shall make sure that the subContract does not affect rights and guarantees to which the Commission is entitled by virtue of the Contract, notably Article II.17.

ARTICLE II.14 – ASSIGNMENT

II.14.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Commission.

II.14.2. In the absence of the authorisation referred to in 1 above, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Commission.

ARTICLE II.15 – TERMINATION BY THE COMMISSION

II.15.1. The Commission may terminate the Contract in the following circumstances:

- (a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;
- (c) where the Contractor has been guilty of grave professional misconduct proven by any means which the Contracting authority can justify;
- (d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- (e) where the Commission seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) where the Contractor is in breach of his obligations under Article II.3;
- (g) where the Contractor was guilty of misrepresentation in supplying the information required by the Commission as a condition of participation in the Contract procedure or failed to supply this information;
- (h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Commission's opinion, have a significant effect on the performance of the Contract;
- (i) where execution of the tasks has not actually commenced within three months⁷ of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Commission;

7

- (j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- (k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his Contractual obligations.

II.15.2. In case of force majeure, notified in accordance with Article II.12, either Contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in Article I.2.3.

II.15.3. Prior to termination under point e), h) or k), the Contractor shall be given the opportunity to submit his observations.

Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

II.15.4. Consequences of termination:

In the event of the Commission terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required by the Special Conditions for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Commission may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

On termination the Commission may engage any other Contractor to complete the services. The Commission shall be entitled to claim from the Contractor all extra costs incurred in making good and completing the services, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE II.16 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Commission's right to terminate the Contract, the Commission may decide to impose liquidated damages of 0.2% of the amount specified in Article I.3.1 per calendar day of delay. The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Commission within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Commission and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

ARTICLE II.17 – CHECKS AND AUDITS

- II.17.1.** Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities, the European Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the European Communities from signature of the Contract up to five years after payment of the balance.
- II.17.2.** The Commission or an outside body of its choice shall have the same rights as the European Court of Auditors for the purpose of checks and audits limited to compliance with Contractual obligations from signature of the Contract up to five years after payment of the balance.
- II.17.3.** In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance.

ARTICLE II.18 – AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the Contracting parties. An oral agreement shall not be binding on the Contracting parties.

ARTICLE II.19 – SUSPENSION OF THE CONTRACT

Without prejudice to the Commission's right to terminate the Contract, the Commission may at any time and for any reason suspend execution of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Commission may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

SIGNATURES

For the Contractor,
[Company name/forename/surname/function]

For the Commission,
[forename/surname/function]

signature[s]: _____

signature[s]: _____

Done at [Brussels], [date]

Done at [Brussels], [date]

In duplicate in English.

ANNEX I

Tender Specifications and Monitoring

The purpose of this Annex is to enable the Commission to conduct, throughout the duration of the Contract, an accurate appraisal of whether the Contractor is executing the tasks assigned to him in accordance with the provisions of the Contract.

So that the Commission can regularly identify the progress made in execution of the tasks in accordance with the Tender Specifications, appropriate monitoring, assessment, and supervisory procedures shall be set up. For these purposes, this Annex shall include all necessary details, in particular, where relevant, the following:

(i) schedule of interim and final reports – terms for approval, structure and content (where provision is made for such reports and a specific annex is not necessary);

(ii) schedule of audits to be carried out in accordance with Article II.17 of the Contract.

All details on Monitoring and Reporting are to be indicated and included in the Tender Specifications.